Supreme Court, U.S.
FILED
MAY 1 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1600

In The

Supreme Court of the United States

October Term, 1988

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY and NEW EDUCATION DEVELOPMENT SYSTEMS, INC.,

Petitioners,

v.

DAVID MOLKO and TRACY LEAL,

Respondents.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

STANLEY F. LEAL
KELLY, LEAL & DAVILLA
697 East Remington Drive
Sunnyvale, CA 94087
(408) 735-8530

Counsel for Respondent Tracy Leal

May 1, 1989

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

As stated by the Supreme Court of the State of California, the legal question is simply whether a religious organization can be held liable on a traditional cause of action in fraud for deceiving non-members in subjecting themselves, without their knowledge or consent, to coercive persuasion – and whether the church's conduct under that theory also gives rise to an action for intentional infliction of emotional distress.

PARTIES TO THE PROCEEDING

All of the parties are listed in the caption.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING i

TABLE OF AUTHORITIES iii

STATEMENT 1

PETITIONERS' REASONS FOR GRANTING THE REQUESTED WRIT ARE ILLFOUNDED 4

TABLE OF AUTHORITIES

Page

CASES

Abbott v. Detroit Board of Education, 431 U.S. 209, 234-35 (1977) 11

Cantwell v. Connecticut, 310 U.S. 296 (1940) 5

Holy Spirit Association for the Unification of World Christianity v. Harper and Rowe, 420 NYS 2d 56 (1979) 8

Lewis v. Holy Spirit Association, 589 F. Supp. 10 (D. Mass. 1983) 9

Meroni v. Holy Spirit Association, 506 NYS 174 (NY App. Div. 1986) 10

Peterson v. Sorlien, 299 NW 2d 123 (Minn.) cert denied, 450 U.S. 1031 (1981) 5

Turner v. Unification Church, D.R.I., (1978) 473 F. Supp. 367, Aff'd 602 F. 2d 458 (1979) 5, 11

United States v. Ballard, 322 U.S. 78 (1944) 4

Van Schaick v. Church of Scientology of California Inc., 535 F. Supp. 1125 (1982) 5

Warder v. Board of Regents of the University of State, 53 NY 2d 186, 423 N.E. 2d 352; 440 NYS 2d 875 (1981) 9

OTHER AUTHORITIES

The Diagnostic and Statistical Manual of Mental Disorders (3rd Edition) (DSM III) (1980) 10

STATEMENT

The Unification Church has for a number of years followed a recruitment scheme in which it depended upon fraud and coercive persuasion for its success. This scheme is fairly well known. Young, vulnerable, idealistic men and women are purposely deceived so as to subject them, without their consent, to carefully employed coercive persuasion techniques. These include isolating the recruit, subjecting the recruit to constant surveillance, preventing communication with anyone except one of the recruiters, deprivation of any outside information source, preventing the recruit from any opportunity to reflect, subjecting the recruit to concocted struggle and confession sessions and discouraging any questioning by the recruit. The purpose of all this is, of course, to reduce the victim to a state where their real capacity to decide and to act thereon has been effectively destroyed.

The recruitment of Tracy Leal is a classic Moon operation in deception. She was a 19 year old college student traveling from her home in the San Francisco Bay Area to Eureka, California, so as to investigate the possibility of matriculating at Humboldt State College. This travel was by bus and necessitated a change of buses at San Francisco. As she proceeded into the San Francisco bus station with her backpack on she was the ideal target for the Moonies who regularly man that station in their recruitment operation. The Moon recruiters claimed to be members of an organization called Creative Community Project. In response to Tracy's direct questions they deceived her into believing that their organization had no religious connection and flatly denied, in response to Tracy's question, that they were the Moonies. Under

these circumstances she went with them to their Bush Street house in San Francisco where she was subjected to the familiar Moon recruitment procedure. She was showered with attention by other young people while prevented from communicating with other potential recruits, given a lecture dealing vaguely with social injustice, shown slides of young people enjoying themselves in a farm setting, and invited to spend the weekend away from the bustle of other activities with them on their property in the country (at Boonville). "In fact, our bus is leaving right now." At Boonville the recruits were subjected to a constant unremitting round of activities, under surveillance which includes being accompanied to the bathroom, enormous peer pressure to "stay a few more days," and all the other mind numbing manipulations for which the Moonies have become infamous. During the next three weeks Tracy did twice ask whether or not this was the Moonie organization. This was twice denied. Only after her recruiters were satisfied that her ability to think independently had been adequately impaired was she informed that indeed this was the Moon organization. App., 8, 9 and 10.

Tracy Leal remained under the domination and control of the petitioners for the next approximate four months. App., 10.

Tracy Leal has, resultingly, brought an action for the damages she suffered as a result of the fraud committed by the petitioners and as a result of the intentional infliction of emotional distress by the petitioners.

The trial court and the California Court of Appeals concluded that the fraud committed by the petitioners

was in effect cured when Leal stayed with the Unification Church after learning of its identity. These courts refused to give consideration to Leal's proffered evidence that her staying with the Unification Church was anything other than voluntary. App., 70 and 109. These courts also recognized no question of fact as to whether or not the scheme employed by the petitioners was so extreme and outrageous so as to support a cause of action for intentional infliction of emotional distress.

The Supreme Court of the State of California in a decision concurred in by all of the then sitting California Supreme Court Justices (dissenting Appellate Justice Anderson was sitting in the place of Justice Edward Panelli who had recused himself) reversed the Court of Appeals. In essence, the Supreme Court of California made the following determinations:

1. The defendants can be held liable on a cause of action in fraud for deceiving the plaintiff into subjecting herself, without her knowledge or consent, to coercive persuasion;

2. It is a question of fact as to whether plaintiff Leal was subjected to coercive persuasion and if so, if that coercive persuasion prevented her from voluntarily remaining with the defendants after she learned of their true identity; and

3. It is a question of fact as to whether the recruitment scheme employed by the defendants constitutes such extreme and outrageous conduct as to warrant liability in tort for the intentional infliction of emotional distress.

PETITIONERS' REASONS FOR GRANTING THE REQUESTED WRIT ARE ILLFOUNDED

Petitioners claim that the decision of the California Supreme Court is inconsistent with the decisions of this court. That inconsistency is far from apparent. The principal case cited by the petitioners is *United States v. Ballard*, 322 U.S. 78 (1944). In *Ballard* this court approved the prosecution of the leader of a religious movement for mail fraud which was based on claimed beliefs by that leader which were not sincerely held by him.[1]

Ballard of course stands for the proposition that the truth or validity of religious beliefs cannot be scrutinized in the court. It must be emphasized that the truth or validity of the theology of the Unification Church is not called into question by respondent Leal. In no way do plaintiff's actions for fraud or emotional distress implicate religious belief. The truth or validity of those beliefs

---

[1] In *United States v. Ballard* the prosecution petitioned successfully to this court for a Writ to the Circuit Court of Appeals which court had reversed a conviction in the trial court. The conviction was based on the finding that defendant did not sincerely believe in the truth of the doctrines forming the basis for their mailed claims and money solicitations. The U.S. Supreme Court in effect approved of the actions of the trial court and remanded for further proceedings the consideration of the other issues the defendants claimed to exist. The five Justices concurring in the opinion thus approved of the conviction but did not reinstate it because the defendant had other constitutional questions which they wanted to present to the court of appeals. Of interest, three other Justices also approved of the conviction and wanted merely to reinstate the conviction in the trial court. There was one dissent.

are in fact irrelevant to the present action. The California Supreme Court recognized this. App. 22.

The California Supreme Court, in determining that plaintiffs were entitled to prove that they were indeed victims of coercive persuasion, recognized that this phenomenon had a basic theory which was set forth in detail in the case of *Peterson v. Sorlien*, 299 NW 2d 123 (Minn.) cert denied, 450 US 1031 (1981).[2]

The California Supreme Court decision is of course totally consistent with this court's ruling in *Cantwell v. Connecticut*, 310 US 296 (1940). In *Cantwell* this court recognized that while religious belief is absolutely protected, religious conduct remains subject to regulations for the protection of society. The court stated at page 306 "Nothing we have said is intended remotely to imply that under the cloak of religion, persons may with impunity commit frauds upon the public." See also *Van Schaick v. Church of Scientology of California Inc.*, 535 F. Supp. 1125 (1982); *Turner v. Unification Church*, D.R.I., (1978) 473 F. Supp. 367, 371, Aff'd, 602 F. 2d 458 (1979).

Petitioners quarrel with the California Supreme Court's determination that defendants can be held liable for the damages suffered by respondents resulting from defendants' fraud. Respondent of course seeks damages for physical, mental and emotional distress and all other

---

[2] In *Peterson v. Sorlien* the court recognized coercive persuasion and approved the trial court's determination that the plaintiff had no volitional capacity to refuse to consent being with her parents and others because of the effects of coercive persuasion worked on her by a "cult." This court denied certiorari.

consequential damages appropriate under the proof adduced at trial. The Supreme Court has appropriately allowed respondents to proceed with proof that they were deceived by the defendants' fraud and to subjecting themselves, without their knowledge or consent, to coercive persuasion and all other damages which are consequent thereto.[3]

Petitioners take the position that a fraud cause of action can seek damages only for out-of-pocket money. There is no basis for such an assumption. One of the more significant elements of damages suffered by respondent Leal was the stress suffered by her by her required practice of the Moonie art of "heavenly deception" in solicitation of funds and in recruiting prospective members.[4]

---

[3] Plaintiff in her complaint, paragraph 59, alleges "as a proximate result of the acts of defendants, and each of them, plaintiff was injured in her health, strength, and activity, sustaining injury to her nervous system and person, all of which injuries have caused plaintiff to suffer extreme and severe physical pain and mental anguish, all to her general damages, according to proof." Plaintiff in paragraph 75 alleges "as a proximate result of defendant's fraud and deceit and the facts herein alleged plaintiff was induced to join the Unification Church and to work extremely long hours and beg on the streets for the Unification Church without compensation . . . " Plaintiff in her prayer asks for general and compensatory damages according to proof and special damages according to proof (as well as punitive damages).

[4] In her response to petitioners' interrogatory number 15 Leal sets forth how she was instructed in heavenly deception: The regular witnessing process was used on me. We are told to smile, always be positive and never complain, because to complain is to be selfish. We were told to size up a person, to look

(Continued on following page)

The assertion by petitioners that respondents have never claimed that the "persuasion" resulted from anything other than emotionally compelling speech is simply wholly without foundation. Please see respondent's statement of facts.

The California Supreme Court decision is carefully and narrowly constructed. It does not appear to impinge upon legitimate recruitment activities of any religious organization. As the Supreme Court recognizes, to

---

(Continued from previous page)

for people who appeared to be on vacation, away from home. We were to pay particular attention to people in their late teens or early twenties, especially those that had a backpack. Tell them what they would want to hear, we were told. Try to connect with them in some way. Perhaps you came from the same city or state, went to the same college, had a common interest in a sport or hobby. The object was to try to win the confidence and trust of the individual. We were told to keep our membership in U.C. a secret. If we were asked about a religious affiliation we were told to just say that we were nondenominational in character and that religion was simply not very important. We were told to stress our "international character." That we had many people who "lived with us" who were from foreign countries. Always stress that the people that lived in "our house" were professionals and that they *all* had outside interests and jobs and that they would get together around the "supper table" to discuss "shared aspirations and feelings." The object was to get the person over to dinner no matter what. It is called "heavenly deception," the process by which one has the right to alter the truth – lie – if that is what it would take to get someone to dinner and beyond. It is rationalized as being perfectly fine because we are following a higher law, the spiritual/God-sent law; all in the name of saving the person spiritually from himself.

require the defendants to refrain from fraudulent recruiting practices places a burden upon them. In weighing that burden against the interest of the state in warding off the "substantial threat to public safety, peace and order" which this fraudulent conduct poses, the decision is obvious. App. 25. As the court notes, the burden of refraining from fraud is not really substantial. "Being subject to liability for fraud does not in any way or degree prevent or inhibit church members from operating in their religious communities, worshiping as they see fit, freely associating with one another, selling or distributing literature, prostitizing on the street, soliciting funds, or generally spreading Reverend Moon's message among the population." App. 25.

Respondents do not ask the courts to inhibit persuasive speech – or even to condemn the systematic manipulation of the social and psychological influences which one might bring to bear on another. Plaintiffs action is for damages resulting from fraud and intentional infliction of emotional distress. The systematic manipulation, or coercive persuasion, is significant in this case on the following basis:

1. Proof of coercive persuasion vitiates the supposed voluntary consent by respondent to remaining with the defendants.

2. The coercive persuasion is part of the outrageous scheme by which defendants have intentionally distressed and damaged respondent Leal.

It is true that several courts have considered a scheme of coercive persuasion used by the Unification Church. In *Holy Spirit Association for the Unification of World Christianity v. Harper and Rowe*, 420 NYS 2d 56 (1979), Unification Church sued for libel over comparison

between Nazi's and the Reverend Moon. Allegations were made by the author that the Unification Church indoctrination techniques for brainwashing were a danger to American society. In granting judgment for the author, the court noted the evidence and extensive research and sources of the author which show the court "sufficient parallel between the Nazi movement, obedience to a messianic leader, etc., and evidence of brainwashing," so that such statements of facts would be appropriate. Of interest, the court also noted that the allegations of brainwashing did not involve questioning of the validity or truth of the beliefs of the Unification Church theology.

In *Warder v. Board of Regents of the University of State*, 53 NY 2d 186, 423 N.E. 2d 352; 440 NYS 2d 875 (1981) an inquiry into whether a particular Unification Church seminary should be denied a provisional charter, the court noted an investigation over the seminary using brainwashing or a policy of deception in fund raising or recruitment was a proper lawful inquiry. " . . . petitioners do not and cannot dispute that the Board could validly deny a provisional charter to an institution that engages in 'brainwashing' and deception . . . "

In the case of *Lewis v. Holy Spirit Association*, 589 F Supp 10 (D. Mass. 1983) a member of the Unification Church brought an action to recover damages arising out of an alleged breach of contract and based upon the torts of brainwashing and indoctrination. The District Court determined that there was no cognizable action on the basis of an alleged tort of brainwashing and indoctrination. The court noted that this might form the basis for an action for intentional infliction of emotional distress but it was not sufficiently pleaded.

In *Meroni v. Holy Spirit Association,* 506 NYS 174 (NY App. Div. 1986) parents brought an action against the Unification Church for their son's suicide allegedly the result of brainwashing. The court determined that the Unification Church's recruitment procedure is conduct for which the church may be held liable. The court however did determine that from the evidence brought before it the deceased did participate in the Unification Church's activities voluntarily – and thus there was no cause of action which the parents could prosecute. Also, in *Meroni,* there was no allegation of or facts supporting, a claim of fraud.

Petitioners would obviously wish that the entire phenomenon of coercive persuasion be striken from our society and our lives. Respondent wishes as well that the fact of coercive persuasion did not exist. The fact is that it does exist and is recognized authoritatively. *THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (3RD EDITION) (DSM III) (1980)* recognizes coercive persuasion:

> 300.15 ATYPICAL DISSOCIATIVE DISORDER
>
> This is a residual category to be used for individuals who appear to have a Dissociative Disorder but do not satisfy the criteria for a specific Dissociative Disorder. Examples include trance-like states, derealization unaccompanied by depersonalization, and those more prolonged dissociated states that may occur in persons who have been subjected to periods of prolonged and intense coercive persuasion (brainwashing, thought reform, and indoctrination while the captive of terrorists or cultists).

As examples of the current recognition of this phenomenon, coercive persuasion was the heart of the

defense in *U.S. v. Patti Hearst* and the heart of the prosecution in *People v. Charles Manson*. It is thought that, after Jonestown, most Americans accept the fact and the danger of coercive persuasion.

It should be noted that it is the respondent, and similar involuntary recruits, who need constitutional protection. It is their freedom of thought, of association, and of religious choice which are deprived through the fraud and recruitment scheme of the Unification Church.

> "The Unification Church cannot seek the protection of one constitutional amendment while it allegedly deprives citizens of the protection of other constitutional guarantees." *Turner v. Unification Church*, supra, at 372.

The rights of respondent Leal in this case to free choice and the free exercise of religion are of paramount importance to society.

> "For at the heart of the First Amendment is the notion that an individual should be free to believe as he will, and that in a free society one's beliefs should be shaped by his mind and his conscience rather than coerced . . ." *Abbott v. Detroit Board of Education*, 431 US 209, 234-35 (1977).

The opinion of the Supreme Court of the State of California in the present case is an excellent carefully considered determination worthy of that prestigious court. The Petition for Certiorari should be denied.

Respectfully submitted,

STANLEY F. LEAL
KELLY, LEAL & DAVILLA
697 East Remington Drive
Sunnyvale, CA 94087
(408) 735-8530

Counsel for Respondent Tracy Leal